IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1466 of 2003
in
SPECIAL CIVIL APPLICATION No 2269 of 1988
with
CIVIL APPLICATION NO. 10678 of 2003

Date of Decision: January 12, 2004

GUJARAT HOMEOPATHIC SOCIETY

Versus

JAYANTILAL RAMANLAL JAYASWAL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

Whether approved for reporting?

For the Appellants Mr. Bipin I. Mehta

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this Letters Patent Appeal, the judgement of the learned Single Judge dated 07-11-2003, passed in Special Civil Application No.2269 of 1988, has been challenged by the appellant.

Whether reporters of Local Papers may be allowed to see the Judgement?

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2. Service of respondent, Jayantilal Ramanlal Jaiswal, Head of Pharmacy Department of Homeopathy Medical College & Hospital, Anand, was terminated by order dated 19-02-1988. The appellant, Gujarat Homeopathic Society, is registered under the Indian Societies Registration Act. It manages the Homeopathic Medical College and Hospital, a recognised Institute established under the Gujarat Homeopathic Act, 1963, for offering four years' diploma course. The respondent alleges that the Council, established under the said Act, is controlled by the State Government; it regulates the functioning of the College under the Act and the Regulations made thereunder. The College is recognised under the Homeopathy Central Council Act, 1973, under which the Homeopathy (Minimum Standards of Education) Regulations, 1983 are framed.

3. Initially, the respondent joined as a labourer and later on became a Professor in Homeopathy. He resigned on October 2, 1980, for personal reasons. He was issued Certificate of Excellence by the Principal. Thereafter, he was invited by the College and appointed as a full time Professor by order dated August 31, 1981 in the pay scale of Rs.700-1500. The respondent claimed higher pay scale. He issued a notice to the College to that effect on 19-12-1985. Subsequently, he filed Regular Civil Suit No. 228 of 1986 seeking pay scale of Rs.1100-1600. While his service was terminated, the Suit was pending. The appellant felt annoyed due to the filing of the Suit by the respondent, issued notice dated September 3, 1986 to the respondent, levelling allegations, and called upon the respondent to show cause as to why disciplinary proceedings be not initiated against him, since the allegations were of serious nature, which undermined the reputation of the Institute. The respondent contested these allegations through reply dated 07-09-1986. The persons who made allegations against the respondent were not examined at the inquiry. During the proceedings of inquiry, the respondent filed Regular Civil Suit No.25 of 1987 challenging the inquiry on various grounds. Civil Court passed interim injunction against holding of inquiry, though, at that time, his service had been terminated, the Suit was pending, and the interim injunction operating. Despite, inquiry report was made on 04-07-1987, charge of misconduct was not established. The charge of misconduct and version of Principal against the respondent was not established. Rather, it was found that the Principal had created unnecessary nuisance, and his statements were not reliable. However, it was recommended that the respondent may not be appointed as an Examiner.

It appears that the Council had passed a Resolution on July 30, 1987 deciding to "file" the matter against the respondent. At this stage also, the Suit was pending, and the injunction against the inquiry was operative. Therefore, the inquiry could not have been continued against the respondent. Thereafter, on February 19, 1988, the impugned order terminating the services of the respondent was passed.

4. The appellant raised preliminary objection to the maintainability of the petition that the appellant is not a "State" under Article 12 of the Constitution of India. This contention is advanced on the decision of this Court in Dr.C.A.Shah vs. Gujarat Cancer & Research Institute (XXXIII(1) GLR 687). It was held in this case that the Gujarat Cancer & Research Institute, Ahmedabad is not a "State" for the reasons recorded in paragraph 21 of the judgment, namely, the Institute was creation of contract between the Gujarat Cancer Society and the State Government, it was not a statutory body, and its funds consisted of properties belonging to Gujarat Cancer Society, gifts, donations and grants by the Government. On facts, it is found that the Institute was not an agency or instrumentality of the Government for carrying out governmental functions. Another decision is Pravinbhai A.Lingalia vs. K.J.Mehta, T.B.Hospital (1998(2) GCD 1048 (Guj)) holding that the Hospital run by a trust, receiving 60% aid from the Government, and arranging 40% finance from donations, did not fall under Article 12 of the Constitution, therefore, writ was not maintainable. It was found that the Government had neither a pervasive control in running the Hospital, nor could it be said that while running the Hospital, the Trust was discharging functions of public importance. The Trust was not acting as an agency or instrumentality of the State, thus, coming within the purview of "Other Authorities" under Article 12 of the Constitution.

5. Giving consideration to the matter, Single Judge records that undisputedly the Medical College and Hospital is run on the basis of hundred per cent grant of salaries given by the State Government by direct payment and fifty per cent of expenses for running the Medical College and Hospital and the functioning of the institution is wholly controlled by the Regulations framed by the Council, which itself is under the complete control of the State Government, which is clear from Sections 37 and 38 of the Act. Further, it is held that the appointment of Professors and other staff in the institution was subject to the approval of the State Government, and the salaries of the Professors and other staff were paid by the State

Government, which had pervasive control over the College and the Hospital, because of hundred per cent grant for teaching and other staff needing prior Government approval and sanction of pay scales, and merely because the Society is registered under the Societies Registration Act, 1816, it cannot be held conclusively that it is not an Authority within the framework of Article 12. Placing reliance on the decision of Constitution Bench of Apex Court in Pradip Kumar Biswas vs. Indian Institute of Chemical Biology ((2002)5 SCC 111), in the facts and circumstances of the case, it is held that Homeopathic Medical College and Hospital is "State" within the meaning of Article 12.

6. Thus, rejecting the preliminary objection as to the maintainability of petition, Single Judge proceeds to examine the allegations against the respondent in the show cause notice dated September 3, 1986, contested by the respondent in Civil Suit No.25 of 1987, wherein the Civil Court granted interim injunction restraining the appellants from holding any departmental proceedings, being operative on the date of the impugned order dated 19-02-1988. Upon the inquiry report dated July 4, 1987, the inquiry committee did not find any substance in the allegations against the petitioner, and the Council decided to "file" the matter irrespective of the fact that there could be no inquiry during the subsistence of the Civil Suit and the injunction order operating against the appellant. However, the impugned order records that it was not in the interest of the institution to continue the respondent in service because the institution had lost confidence in him. The Apex Court in Kamal Kishore Lakshman vs. Management of M/s. Pan American World Airways Inc. (AIR 1987 SC 229) held that loss of confidence by the employer in the employee certainly affects the character or reputation of the employee, therefore, casts a stigma, as such, the action would be vitiated, the employee ought to have been given opportunity of dealing with the allegations, which led to passing of the impugned order. On the contention that the Society had ample power to relieve an employee by giving three months notice before the date he is relieved, it is held that Rule 45 refers to orders of termination simpliciter, and not orders, which in reality impose penalty of removal under the guise of termination simpliciter. Similar Rule, by the Constitution Bench of the Apex Court in Delhi Road Transport Corporation v. D.T.C. Mazdoor Congress (AIR 1991 SC 101), has been held illegal and void, being arbitrary, discriminatory and without any guidelines. The appellant could not have continued the inquiry because of injunction operating against it. However, with a view to circumvent the Civil

Court's direction, the appellant chose to "file" the proceedings and passed the impugned order, terminating the services of the respondent, on the ground that they were no more required. Such a recourse was neither permissible under Rule 45 nor warranted in the facts and circumstances of the case. The learned Single Judge held that it was penal, casting a stigma, as such, untenable without affording adequate opportunity of hearing. Consequently, the impugned order dated 19-02-1988 has been set aside. Finally, in paragraph 13 of the judgment, the Single Judge said:

> "13.It has come on record that the petitioner has been gainfully employed, and that, in fact, he has been working as a professor since 16-8-1993. Even before that, it appears that he was running a clinic and having a medical store in the name of his wife. There is, therefore, no warrant for directing any backwages to be paid to the petitioner for the period after his termination of service. The petitioner is at present employed as a professor in Ahmedabad Homeopathy College, as stated by the learned counsel for the petitioner. Therefore, since he would be entitled to be reinstated in view of the impugned order of termination of his service passed on 19-2-1988 having been set aside, he will have to put in his resignation and then, apply for being reinstated on the basis of the present order. Though the petitioner will not be entitled to any backwages or other financial benefit for the interregnum period, he will be entitled to continuity in service on reinstatement. The setting aside of the impugned order for the reasons stated hereinabove will be without prejudice to the powers of the respondent authorities to proceed against the petitioner in the matter in accordance with law subject to the orders in the civil suit which was filed challenging the departmental proceedings. Rule is made absolutely (sic) accordingly with no order as to costs."

7. Aggrieved by the judgment, the appellants have filed the Letters Patent Appeal. Shri Bipin I.Mehta, learned counsel for the appellants, contended that Gujarat Homeopathic Society is not "State" under Article 12 of the Constitution, there is no pervasive control over its functioning by the State Government, giving cent per cent grant for salaries and fifty per cent towards expenses will not bring the Society under the definition of Article 12 of the Constitution, Society is managed by the Trustees

without control of the State Government, none of the Trustees are Government Nominees, and the Homeopathic Medical College and Hospital is an autonomous institution run with finances largely contributed by donations, capital accumulation, etc. Supreme Court has formulated tests in several cases to find out whether an institution is a "State". There cannot indeed be a straight jacket formula. It is not necessary that all the tests should be satisfied in reaching the conclusion either for or against holding an institution to be "State". Some features may emerge predominantly in a given case, other features may not, yet, the entity may be State within the meaning of Article 12 of the Constitution.

8. Large number of decisions have been rendered on the interpretation of Article 12 of the Constitution of India by High Courts and Supreme Court.

K.S.Ramamurthy v.Chief Commissioner, Pondicherry, AIR 1963 SC 1464,

Paramatma Sharan v.Chief Justice, AIR 1964 Raj 13

Rajasthan State Electricity Bard vs. Mohanlal AIR 1967 SC 857,

Umesh Chandra v.V.N.Singh, AIR 1967 Pat (FB),

Praga Tools Corporation v. C.A.Emanual, (1969) 1 SCC 585,

Sukhdev v. Bhagatram, AIR 1975 SC 1331, 1342,

Sabhajit v. Union of India, AIR 1975 SC 1329,

Mysore S.R.T.C. v.Devraj, AIR 1976 SC 1027,

Premji Bhai v. Delhi Development Authority, AIR 1980 SC 738

Ajay Hasia etc. vs. Khalid Mujib Sehravardi & ors. etc., AIR 1981 SC 487,

State of Punjab v. Raja Ram, (1981) 2 SCC 66,

Som Prakash v. Union of India, AIR 1981 SC 212;

Tajinder Singh v. Bharat Petroleum Corporation Ltd., (1986) 4 SCC 237,

D.C.M.Limited v.Assistant Engineers (H.M.T.

Sub-division), Rajasthan State Electricity Board, Kota, AIR 1988 Raj 64,

Star Enterprises v.City and Industrial Development Corporation of Maharashtra (1990) 3 SCC 280,

D.T.C. v. Mazdoor Congress AIR 1991 SC 101,

Pradip Kumar Biswas vs. Indian Institute of Chemical Biology ((2002)5 SCC 111), which overrules Sabhajit case.

9. Profitable, it would be to make mention of the case of Ajay Hasia (supra) and Pradip Kumar Biswas (supra). In Ajay Hasia's case Bhagwati J, as he then was, laid down formal tests for determining whether an entity is an instrumentality or a agency of the State, viz, (1) If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government, (2) the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it would afford some indication of the corporation being impregnated with governmental character, (3) the corporation enjoys monopoly status which is either State-conferred or State-protected, (4) deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality, (5) if functions of the corporations are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government, (6) if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

10. In Pradip Kumar Biswas case (supra), ratio seems to be that "State" in Article 12 is not exhaustively defined. The definition is "inclusive". Therefore, entities to be included within the definition of "State" continued to be added by the Courts from time to time. In paragraph 27, the Apex Court said:

"27. Ramana was noted and quoted with approval in extenso and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows: (SCC p.737, para 9)

"(1) One thing is clear that if the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporations are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) `Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)."

Thereafter, in paragraph 47, it is said that:

"47.Incidentally, CSIR was and continues to be a non-profit-making organization and according to clause 4 of CSIR's memorandum of association, all its income and property, however derived shall be applied only "towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from to time impose"

11. Finally, with regard to Sabhajit Tewary case, the Apex Court said in paragraph 59 that:

"59. From whichever perspective the facts are considered, there can be no doubt that the conclusion reached in Sabhajit Tewary was erroneous. If the decision of Sabhajit Tewary had sought to lay down as a legal principle that a society registered under the Societies Act or a company incorporated under the Companies Act is, by that reason alone, excluded from the concept of State under Article 12, it is a principle which has long since been discredited. "Judges have made worthy, if shamefaced, efforts, while giving lip service to the rule, to riddle it with exceptions and by distinctions reduce it to a shadow."

12. Adverting to the present case, it is found undisputedly that Homeopathic Medical College and Hospital is run on the basis of hundred per cent grant of salaries and fifty per cent of the expenses by the State. The Council, consisting of 11 members, has four members nominated by the State Government. In case, if at any election, the electors fail to elect the requisite numbers to the Council, the State Government shall nominate such registered practitioners as it deems fit, to fill the vacancies which remain unfilled after the election and the practitioners so nominated shall, for the purpose of sub-section (2), be deemed to have been duly elected under the said sub-section. Casual vacancy can be filled by nomination by State, be it President or member. Registrar of the Council can be appointed by the Council with the previous sanction of the State Government, and during the temporary vacancy in the Office of the Registrar due to leave or any other reason, another person to act in his place can be appointed by the Council with the previous sanction of the State Government. Person appointed as Registrar can be suspended/dismissed with the previous sanction of the State Government. The Council can prescribe by Regulations the number and designations and the salaries, allowances and other conditions of service of other officers and servants, as may be necessary, for the purposes of carrying out its duties and functions under this Act with the previous sanction of the State Government. Recognition of institution, accorded by the Council, can be withdrawn by the State Government. The State Government can make Rules for carrying out the purposes of the Act by Notification in the Official Gazette. The Council can make Regulations not inconsistent with the Act or the Rules made thereunder with the previous sanction of the State Government. For the control of Government, it is envisaged under Section 38, that:

"38.Control of Government.-(1) If at any time it appears to the State Government that the Council has failed to exercise or has exceeded or abused any of the powers conferred upon it, by or under this Act, or has otherwise ceased to function or has become incapable or functioning the State Government many notify the particulars thereof to the Council and if the Council fails to remedy such failure, excess or abuse within such time as the State Government may fix in this behalf, the State Government may, after giving the Council an opportunity to render an explanation, dissolve the Council and cause all or any of the powers or duties of the Council to be exercised and performed by such person and for such period not exceeding two years as it may think fit and shall take steps to constitute a new Council.

(2) Notwithstanding anything contained in this Act, rules or regulations, if at any time it appears to the State Government that the Council or any other authority empowered to exercise any of the powers or to perform any of the functions under this Act, has not been validly constituted or appointed, the State Government may cause any of such powers or functions to be exercised or performed by such person, in such manner, for such period not exceeding six months and subject to such conditions as it thinks fit."

13. Finally, the power to remove difficulties arising in giving effect to the provisions of the Act is vested in the State Government. Section 42 envisages that:

"42.Power to remove difficulties.- If any difficulty, arises in giving effect to the provisions of this Act, the State Government may, as occasion requires by order do anything which appears to it necessary or expedient for the purpose or removing the difficulty.

14. Rules 25, 26 and 27 of the Gujarat Homeopathic Rules, 1965, also indicate that Government has control over the Council, which manages the institution. Therefore, the contention that it is registered under the Indian Societies Registration Act does not cut much ice. Applying the tests formulated on the subject from time to time by judicial decisions and taking into consideration the facts/features of the case recorded by the learned Single Judge, we have no iota of doubt to conclude that the appellant is a State within the meaning of Article 12

of the Constitution of India, and contention to the contrary is liable to be rejected. Another facet of the question as to maintainability of petition under Article 226 against the appellant, is beyond doubt, looking to the public nature of functions being performed by it. Entity called upon to perform public nature of functions as against private function, cannot oppose interference at the instance of a citizen or an aggrieved person by filing petition under Article 226 of the Constitution of India, since petition under Article 226 can not only be filed for enforcement of fundamental rights in part III of the Constitution, but also for any other purpose, obviously, for enforcement of his constitutional and legal rights.

15. In Unni Krishnan J.P. and others vs. State of Andhra Pradesh and others ((1993) 1 SCC 645), examining the question of maintainability of writ petition under Article 226 of the Constitution, the Apex Court said in paragraphs 78 and 79 that:

"78. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvama Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani, [1989] 2 SCC 691 is an interesting case where a writ of mandamus was issued to a private college. In paragraph 12 at page 697 it is held:

`12. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the management of the college being a trust registered under the Bombay Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court: (a) Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, [1976] 2 SCC 58 and (b) Deepak Kumar Biswas v. Director of Public Instructions, [1987] 2 SCC 252. In the first of the two cases, the respondent institution was a Degree College managed by a registered cooperative society. A suit was filed against the college by the dismissed principal for reinstatement. It was contended that the Executive Committee of

the college which was registered under the Co-operative Societies Act and affiliated to the Agra University (and subsequently to Meerut University) was a statutory body. The importance of this contention lies in the fact that in such as case, reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body.'

In paragraphs 15 to 20 it is held that:

`15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See The Evolving Indian I Administrative Law by M.P. Jain (1983) p. 226) So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service

conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.'

`16. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission 'to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure'. The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review':

`At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute, is phrased in flexible terms. it gives scope for development. It uses the words `having regard to.' Those words are indefinite. The result is that the

courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are and who are not public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.'

`17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean every body which is created by statute and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ in the nature of mandamus. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.

18. Article 226 reads:

`226.Power of High Courts to issue certain writs. (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government within those territories directions orders and writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose'.

`19. The scope of this article has been explained by Subba Rao, J., In Dwarkanath v. ITO, [1965] 3 SCR 536:

`This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other then the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with, that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself'.

`20. The term "authority" used in Article 226, the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and

instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

"79. The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

16. The learned Single Judge examined the merits of the case comprehensively, and found that the respondent, a long time Professor in the Institute, has been proceeded against, despite Court injunction in a pending Civil Suit, and when inquiry report is not against the respondent, the appellant decided to "file" the matter so that it could deal with the matter setting at naught the judicial procedures adopted by the respondent, and terminated his services on the ground that the same are not required, the respondent having lost confidence of the institution. Obviously, this conduct reflects the mind-set of the appellant. Services of respondent were to be terminated, therefore, the appellants were bent upon achieving the end irrespective of the nature of means. Rightly, the learned Single Judge has found the conduct of the appellant unwarranted, and the means and the nature having "lost the confidence of the employer" amounting to misconduct, therefore, held that the respondent is entitled to hearing, and since he was not heard, impugned order stood vitiated. We think, no other conclusion can be drawn in the facts and circumstances of the case. We entirely agree with the approach and conclusions of the learned Single Judge.

What emerges out of the aforesaid discussion is

that there is no merit in this Appeal and the same is dismissed.

Accordingly, Civil Application shall also stand rejected.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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